IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	09/970,161	Examiner:	Gottschalk, M.
Confirmation No.:	9581	Art Unit:	3694
Filing Date:	October 2, 2001	Atty. Dkt. No:	5053-46912
Inventors:	Stephan Wahlbin		
Title:	COMPUTERIZED METHOD AND SYSTEM FOR PROVIDING CLAIMS DATA TO AN ACCIDENT LIABILITY ASSESSMENT PROGRAM		

CERTIFICATE OF ELECTRONIC TRANSMISSION
UNDER 37 C.F.R. §1.8

DATE OF DEPOSIT: Dec 13, 2007

I hereby certify that this correspondence is being deposited with the United States Patent Office electronic filing system on the date indicated above

Jackie L. Pitre

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant submits the following response to the Examiner's answer mailed October 12, 2007.

REMARKS

The Examiner maintained his rejection of claims 753, 755-759, 761-763, 765-767, 769, 770, 776-779, 786, 787, 794, 800, 801, 849, 850, and 852 as being unpatentable under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,950,169 to Borghesi (hereinafter "Borghesi") in view of U.S. Patent No. 6,336,096 to Jernberg (hereinafter "Jernberg").

Claim 753 is directed to a method of determining the right of way in a vehicle accident. The method of claim 753 includes:

> providing claim data regarding a vehicle accident to a computer system via a graphical user interface;
>
> providing data regarding at least one vehicle involved in the vehicle accident to the computer system via the graphical user interface;
>
> providing an assessment of the vehicle accident to the computer system via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident;
>
> displaying a consultation report via the graphical user interface, wherein displaying a consultation report comprises displaying the assessment of the liability of the insured party; and
>
> storing the claim data regarding the vehicle accident, the data regarding at least one vehicle involved in the vehicle accident, and the assessment of the vehicle accident in a memory associated with the computer system.

Appellant respectfully submits that the combination of features of claim 753 are not taught or suggested by the cited art.

Claim 753 is directed to a method that includes the feature of providing an "assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident." With respect to the above-quoted feature, the Examiner relies on Jernberg, col. 3, lines 63-65. Jernberg states:

> This invention relates to a system and method for evaluating liability and settlement opportunities, and more particularly, to a system and method for concurrently evaluating environmental liability and settlement opportunities among multiple potential responsible parties (PRPs) and multiple insurers at multiple environmental sites.
> (Jernberg, column 3, lines 52-67)

Appellant disagrees that the cited section of Jernberg teaches the above-quoted feature of claim 753. Jernberg discloses potential responsible parties ("PRPs") having multiple insurers covering different periods of risk. Jernberg does not teach or suggest an assessment of vehicle accident including a proportion of liability for a person involved in the vehicle accident. This is acknowledged by the Examiner in the Examiner's Answer. The Examiner relies on Borghesi, in combination with Jernberg, to teach at least this feature.

Borghesi appears to be directed to a method and system for processing insurance claims relating to damaged automobiles for use by insurance companies, appraisers, repair shops, salvage yards and other support industries. For example, Borghesi states:

> The present invention provides for a comprehensive method and system for processing insurance claims for use by insurance companies as well as appraisers, repair shops, salvage yards and other support industries related to insurance claim processing and resolution. One aspect of the present invention includes a method having the steps of first providing a remote computer and a computer in the home office of an insurance company that are in communication over a wide area network. An insurance claim datafile containing all data pertinent to an insurance claim is generated at the remote computer....
>
> In a preferred embodiment, the datafile contains data on the insured, including policy information; data on a claim, such as the extent of damage or injury; and data on satisfying a claim including repair estimates and total loss valuation of, for example, an automobile. Further, the preferred method includes the additional step of generating an event log that tracks all actions taken on a claim datafile. The method also preferably includes monitoring calculations of repair costs to determine if the repairs are approaching or exceeding the total loss valuation of a vehicle.
> (Borghesi, Col. 2, lines 32-59)

Borghesi appears to teach that certain information (e.g., policy information; data on a claim, such as the extent of damage or injury; and data on satisfying a claim including repair estimates and total loss valuation of, for example, an automobile) is provided to a computer for storage as a datafile. Borgjhesi does not appear to teach or suggest providing an "assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident." Furthermore, Borghesi does not appear to teach or suggest any method of determining the "assessment of the liability." Borghesi or Jernberg do not appear to teach or suggest any method of determining and, therefore, providing an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident. Combining the software of Borghesi with the software of Jernberg would not provide all of the features of Appellant's claims. Specifically, there is no taught or suggested method of providing liability estimates in either reference.

Appellant's claims include the claimed feature of "assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident." Borghesi does not appear to teach how to obtain or perform this assessment. Even if Jernberg, for arguments sake only, teaches the assessment of liabilities, there is no motivation to modify this feature for vehicle accidents or any suggestion that this would be possible. The Examiner appears to be picking and choosing isolated features of Borghesi and combining some of these features with Jernberg, and creating additional features that are not taught in either reference. Without the benefit of Appellant's teachings, however, the Examiner would not be able to reproduce all of Appellant's claimed features.

The Examiner is reminded that whether or not "a particular combination might be 'obvious to try' is not a legitimate test of patentability." *Id.* at 1599, citing *In re Geiger*, 815 F.2d 868, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987, emphasis added) and *In re Goodwin*, 576 F.2d 375, 377, 198 USPQ 871, 881 (CCPA 1981). Consequently, it is not permissible for the Examiner to "use hindsight reconstruction to pick and chose among isolated disclosures in the prior art to deprecate the claimed invention." Id. at 1600.

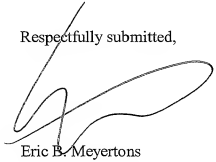
Appellant submits, therefore, that the claims are patentable over the cited art for at least the reasons cited above.

CONCLUSION

Appellant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are required, please charge those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5053-46912/EBM.

Respectfully submitted,



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Date: December 12, 2007